DOROTHY SMITH

IBLA 79-133 Decided February 23, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring the Airway Nos. 15 and 17 placer mining claims null and void ab initio. N 21283 A and B.

Affirmed.

1. Act of August 12, 1953--Mining Claims: Determination of Validity--Mining Claims: Lands Subject to--Multiple Mineral Development Act: Generally

   Lands which were subject to an oil and gas lease offer on September 20, 1951, were not open to mineral location, and mining claims located on such lands on this date are properly declared null and void in the absence of compliance with the redemption provisions of the Act of August 12, 1953, and the Multiple Mineral Development Act, requiring filing of an amended notice of location prior to December 10, 1953, in the place and manner in which the original notice was of record.

2. Act of August 12, 1953--Multiple Mineral Development Act: Generally--Notice: Generally

   A mining claimant's failure to comply with the redemption provision of the Act of August 12, 1953, and the Multiple Mineral Development Act is not excused because BLM failed to notify her of the availability of this provision.

3. Federal Employees and Officers: Authority to Bind Government

The authority of the United States to enforce a public right or protect a public interest, including its right to cancel invalid mining claims which encumber the public lands, is not vitiated or lost by acquiescence of its officers or agents, or by their laches or delays in the performance of their duties. Regardless of this rule, laches is not appropriate where it appears that the Government's failure to act probably resulted from unfamiliarity with existence of these mining claims.

4. Administrative Authority: Estoppel--Equitable Adjudication: Generally--Estoppel--Federal Employees and Officers: Authority to Bind Government

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

APPEARANCES: Thomas A. Peterson, Esq., Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On November 21, 1978, the Nevada State Office, Bureau of Land Management (BLM), issued a decision declaring the Airway Nos. 15 and 17 placer mining claims null and void ab initio, from which decision Dorothy Smith, the present claimant, has appealed.

On September 20, 1951, Smith and seven other mining claimants 1/ located these claims, and, on December 13, 1951, notice of location therof was recorded in the office of Clark County, Nevada. On September 4, 1951, 16 days prior to the location of these claims, H. C. McAuley had filed an oil and gas lease offer for the lands on which the claims are situated. An oil and gas lease was issued to McAuley effective October 1, 1951, and was in effect until

---

1/ In addition to appellant, the original locators of these claims are L. R. Harris, F. D. Smith, Alex J. West, W. G. Hunt, Lucia Harris, Agnes Rose West, and E. C. House.

September 30, 1954, when it terminated for failure to pay annual rental.

Between 1951 and October 19, 1978, BLM took no action concerning these claims, during which time appellant apparently developed a sand and gravel quarry there. On the latter date, appellant filed with BLM a mining claim location abstract, presumably in compliance with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (West Supp. 1978). Thereafter, BLM determined that the claims were located on lands which were subject to McAuley's oil and gas lease offer at the time of their location, and that no amended notice of location had ever been filed concerning them.

[1] Under the public land laws in effect on September 20, 1951, lands which were subject to oil and gas lease offers were not open to mineral location, and mining claims located on such lands were accordingly null and void. Merritt N. Barton, 79 I.D. 431, 432, 6 IBLA 295, 296 (1972); Clear Gravel Enterprises, Inc., 64 I.D. 210, 211 (1957); Clear Gravel Enterprises, A-27287 (March 27, 1956); R. L. Greene, A-27181 (May 11, 1955); Filtrol Co. v. Brittan, 51 L.D. 649, 653 (1926); Joseph E. McClory, 50 L.D. 623, 626 (1924).

This rule was changed by the Act of August 12, 1953, 67 Stat. 539, 30 U.S.C. § 501 (1976), and the Multiple Mineral Development Act of August 13, 1954, 68 Stat. 708, 30 U.S.C. § 521 (1976), so that lands could be open and available for the location of mining claims and the leasing of leasable minerals, concurrently. Moreover, Congress expressly provided a procedure to validate mining claims located subsequent to July 31, 1939, and prior to February 10, 1954, on lands which, at the time of location, were subject to leases or lease offers. Such a claim could be validated by filing for record an amended notice of location in the same place that the original notice had been filed. In appellant's case, the deadline for doing so was December 10, 1953, as these claims were located prior to January 1, 1953, and subsequent to July 31, 1939. 30 U.S.C. §§ 501, 521 (1976). Congress thus provided a means whereby these otherwise void claims could be validated. Clear Gravel Enterprises, Inc., 64 I.D. at 211.

Inasmuch as the land on which these claims were located in 1951 was the subject of an oil and gas lease offer at the time of their location, it was not open to mineral location at that time, and the Airway Nos. 15 and 17 placer mining claims are null and void in the absence of compliance with the redemption provisions set out above. Clear Gravel Enterprises, Inc., supra (both cases); R. L. Greene, supra. As appellant apparently did not avail herself of those provisions by filing an amended location prior to December 10, 1953, BLM properly declared these claims null and void ab initio. In the absence of compliance with this provision, it is immaterial that the claimant may have developed the claim, filed annual proofs of labor, and performed at least $100 assessment work each year. Ibid.

[2] Appellant argues that these claims should not be declared invalid because BLM failed to notify her by mail and to publish notice generally in Nevada that Congress had passed legislation permitting validation of this type of claim. This argument is without merit. BLM had no such obligation. BLM's failure to gratuitously notify the mining claimant that filing of a notice of location is required by statute in order to validate her claim does not justify her failure to file the notice as required, or exempt her from the consequences. Belton E. Hall, 33 IBLA 349, 352 (1978); see Public Service Co. of Oklahoma, 38 IBLA 193, 195 (1978). Appellant's argument flies in the face of the long established principle that citizens are presumed to know the law. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Belton E. Hall, supra, and cases cited. 2/

[3] Appellant also asserts that BLM is barred from declaring these claims null and void by laches, as 27 years passed between the location of these claims and BLM's taking action to cancel them. The authority of the United States to enforce a public right or protect a public interest, including its right to refuse recognition of invalid mining claims which encumber the public lands, is not vitiated or lost by acquiescence of its officers or agents, or by their laches or delays in the performance of their duties. 43 CFR 1810.3; United States v. Joseph Larsen, 36 IBLA 130, 134 (1978); Montana Copper King, 20 IBLA 30 (1975); United States v. Zweifel, 11 IBLA 53, 80 I.D. 323 (1973), aff'd sub nom Roberts v. Morton, 549 F.2d 158 (10th Cir. 1977).

Even were we to disregard the foregoing, as appellant correctly observes in her statement of reasons, an essential element of the defense of laches is that the party who unreasonably delayed have had full knowledge of the fact that action was appropriate. Until the passage of FLPMA, supra, in 1976, BLM was not regularly served with notices of location of mining claims. Nevertheless, in 1953, in some

---

2/ Appellant's suggestion that BLM should have mailed her notice of the passage of the redemption provision demonstrates naivete concerning the difficulties facing BLM in administering the public lands. In order to have done what appellant suggests was her due, BLM would have had to cull the records of the county land offices in Nevada (as well as all other States where the 1872 Mining Law is operative) and compile a list of each mining claim. There are thousands of such claims in Nevada. Then, BLM would have had to compare the location with its records relating mineral leases, permits and offers. Where conflicts with mining claims were noted, BLM would then have to contact and advise each claimant. This would have been a truly herculean task, yet appellant feels that BLM's failure to undertake and complete it in 120 days deprived her of her right to due process. It was up to appellant, as one seeking a benefit upon the public lands, to keep apprised of legal developments and their effects on her intended interests therein.

unspecified manner, BLM apparently did learn of the existence of several "sister" claims, the Airway Nos. 3, 9, and 10, which were also located on the lands within the oil and gas lease offer, as, on July 23, 1953, (prior to the passage of the statute allowing redemption of such claims) it notified appellant and the other claimants that these three claims were null and void because they were located on land which was subject to McAuley's oil and gas lease offer. Appellant maintains that the fact that BLM invalidated the Airway Nos. 3, 9, and 10 claims in 1953 indicates conclusively that it knew then that action was also required as to Airway Nos. 15 and 17, yet failed to take such action. We disagree.

BLM's failure to notify appellant of the invalidity of these claims in 1953 could just as well indicate that it was unaware of their existence at this time, owing to the fact that it had not received any official notice of their location. BLM stood to gain nothing by postponing action to invalidate these claims, so that, unless it simply inadvertently neglected to take action against these claims, which we find unlikely, the only reasonable explanation for its failure to do so is that it did not know of their existence until October 1978, when appellant filed her notice under FLPMA. Thus, we do not agree with appellant that "[t]here can be no doubt but that BLM in 1953, had full knowledge that the oil and gas lease application of H. C. McAuley voided the [Airway Nos. 15 and 17] placer mining claims."

[4] Appellant also argues that BLM should be estopped from declaring these claims null and void, as she, in ignorance of the true state of affairs (i.e., that the claims were invalid), relied on BLM's failure to inform her of their invalidity by investing money to develop them. Even apart from 43 CFR 1810.3, which provides that the United States is not bound, contrary to law, by the acts of its officers and agents, we have concluded that this matter is not appropriate for the extraordinary relief of equitable estoppel.

Equitable estoppel will not operate to bar action to invalidate a mining claim or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claim valid, falsely represented material facts to the claimants concerning the validity of the claims or concealed material facts from them with the intention that they should act in reliance thereon, with the result that they were induced to do so, to their ultimate damage. United States v. Joseph Larsen, supra at 133; United States v. Johnson, 23 IBLA 349, 355-6 (1976); United States v. Fleming, 20 IBLA 83, 97 (1975), and cases cited. BLM did nothing here which expressly indicated that these claims were valid, and nothing in the record suggests that by its inaction, BLM was deliberately fostering this mistaken impression. While appellant may have presumed that BLM's failure to say otherwise meant that the claims were valid, BLM did nothing to engender this belief. To the contrary, as discussed above, it was equally possible to draw a different presumption from BLM's inaction,

i.e., that it simply was unaware of the existence of these claims. The essential element of "affirmative misconduct" on the part of the United States is not present. See United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

Moreover, as appellant notes, in order for estoppel to lie, she would have had to be ignorant of the true fact that the claims were invalid. Appellant asserts that she should not be held responsible for knowing that McAuley's lease covered the Airway Nos. 15 and 17 claims. We disagree. BLM has notified her in 1953 that adjoining claims were invalid because of conflict with the lease. Had appellant troubled to check the records concerning McAuley's lease offer and lease (to which BLM referred in its letters of July 24, 1953), she would have seen that the Airways Nos. 15 and 17 claims were also located within the lease area, and been alerted to their probable invalidity.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Edward W. Stuebing
Administrative Judge

We concur:

_____
Newton Frishberg
Chief Administrative Judge

_____
Frederick Fishman
Administrative Judge